



INDEPENDENT
Investigations Office of BC



Manual of Investigations

Gene Krecsy
Chief of Investigations, Operations
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Table of Contents

Chapter 1: Introduction.....	5
Chapter 2: IIO Case Management.....	7
Why Do We Utilize IIO Case Management?	7
Principles of IIO Case Management	7
1) The Command Triangle.....	7
2) Communication	8
3) Leadership and Teams	9
4) Management Considerations	9
5) Investigative Strategies.....	10
6) Accountability Mechanisms	10
7) Ethical Considerations.....	11
8) Legal Considerations.....	12
9) Partnerships	12
Chapter 3: Roles and Responsibilities.....	13
Chief Civilian Director.....	13
Chiefs of Investigations	14
Command Triangle	14
Team Director	14
Primary Investigator.....	14
File Coordinator	15
Affiant.....	16
Investigator	16
Forensic Investigator.....	17
Investigative Assistant.....	17
Affected Persons Liaison	18
Media & Communications Liaison (MCL).....	18
Chapter 4: Notification, Deployment and Initial Investigation	20
Notification	20
Deployment.....	20
Concurrent Investigations with Police Agencies.....	20

IIO – MANUAL OF INVESTIGATIONS

Chapter 5: Investigation Considerations.....	22
Maximize Evidentiary Opportunities.....	22
Critical Thinking	22
Risk Management.....	23
Prevention of Tunnel Vision	23
File Reviews.....	24
Key Issues at File Reviews	24
Chapter 6: Investigative Process and Procedure – Note Taking	26
Importance of Note Taking	26
Note Taking Considerations.....	26
Best Practices for Notebooks.....	27
Daily Notebooks (Daily Logs, General Notebooks).....	27
Chapter 7: Investigative Process and Procedure - Briefings	28
Purpose and Frequency of Briefings.....	28
Preparation for Briefings	28
Practical Considerations for Briefings	28
Separate Briefings	29
Debriefings.....	29
Other Meetings	29
Chapter 8: Investigative Process and Procedure – Investigational Logs & Decision Logs	30
Investigational Logs	30
Decision Logs	31
Who Should Maintain a Decision Log?	31
Why Maintain a Decision Log?.....	31
What Types of Decisions Should be Included?	32
What Should Be Documented?.....	32
Considerations for Decision-Making	32
Phases of Decision Making.....	33
Chapter 9: Investigative Process and Procedure - Canvassing for Witnesses.....	34
Purpose of Canvass.....	34

IIO – MANUAL OF INVESTIGATIONS

Types of Canvass	34
Practical Considerations	34
Video Canvassing	35
Social Media/Media Canvassing	35
Chapter 10: Investigative Process and Procedure - Interviews	36
Interviews – General	36
Staffing of Interviews.....	36
Pre-interview Disclosure	37
Witness State of Mind	37
Affected Persons.....	38
Witness Officers.....	39
Subject Officers.....	39
In-Custody Subject Officers	40
Youth and Vulnerable Witnesses	41
Sworn Statements (KGB).....	41
Follow Up & Second Interviews	41
Chapter 11: Disclosure.....	43
Disclosure Obligations	43
Responsibility for Disclosure	43
Preparation for Disclosure.....	43
Disclosure to Other Agencies.....	44
Vetting	44
Holdback Information	45
Investigation Notes, Emails and Disclosure Statements	45
Disclosure of Police and IIO Disciplinary Records	46
APPENDIX 1: NINE PRINCIPLES of IIO CASE MANAGEMENT	47
APPENDIX 2: RECOMMENDED READING	49

Chapter 1: Introduction

The Independent Investigations Office of BC (IIO) is mandated to conduct investigations into police-related incidents of death or serious harm in order to determine whether or not there are reasonable grounds to believe an officer may have committed an offence. The IIO derives its authority from the British Columbia *Police Act*.

Grounded and directed by its mission, vision and values, the IIO strives to be the leading oversight agency, enhancing the public's faith in police accountability. IIO Investigators must conduct themselves with professionalism, excellence, collaboration, trust and courage. Through our people, we achieve investigative excellence and transparent reporting of serious police incidents for British Columbians.

The IIO undertakes public interest investigations, conducting them to a criminal law standard. There does not need to be an allegation of wrongdoing for the IIO to conduct an investigation. The IIO gathers all evidence and reports back on the results. The IIO does this in as transparent a manner as practicable in the circumstances, respecting the integrity of the investigation and the privacy interests of those that we deal with.

To meet those high standards, the IIO will utilize the best investigative practices available and be driven by the law. As part of its commitment to that standard, the IIO will apply the principles of Major Case Management (MCM) and be open to scrutiny and continuous improvement.

The IIO's Manual of Investigations (MOI) applies the MCM concepts to oversight investigations. The result is an IIO-specific manual of best practices. To accompany the MOI, Standard Operating Procedures (SOPs) have been developed to provide more detail on specific areas. The Business Rules complement the SOPs and can also be applied and adapted to individual investigations. This flow, from broad principles to detailed Business Rules, promotes understanding of, and adherence to, best practices.

A great deal of work and consultation has gone into the development of this MOI. Senior Investigators, police, stakeholders and other oversight bodies have all provided documents, insight and direction. Many of their concepts and language are openly reflected or reproduced here.

IIO VISION, MISSION & VALUES

VISION

The leading oversight agency, enhancing the public's faith in police accountability.

MISSION

Through our people, we achieve investigative excellence and transparent reporting of serious police incidents for British Columbians.

VALUES

Professionalism

Excellence

Collaboration

Trust

Courage

Chapter 2: IIO Case Management

IIO Case Management is utilized to manage all IIO investigations. IIO Case Management is a reflection of the Major Case Management (MCM) methodology used by police and other provincial investigative bodies for managing major investigations. IIO Case Management structures investigations by providing clear goals and objectives, establishing lines of responsibility and decision-making authority, and creating infrastructure for the recording, storage and sharing of information.

Why Do We Utilize IIO Case Management?

In Canada, a number of high profile cases have led to reviews and public inquiries into the police handling of serious investigations. Those reviews, and the lessons learned from them, have ultimately resulted in the formalization of the MCM model.

The same principles and disciplines of MCM provide the framework for IIO Case Management. The IIO Case Management builds an investigative structure based on best practices in order to fulfill our mandate. The British Columbia Provincial Policing Standards make MCM mandatory for the IIO in all major cases (beginning January 2019).

Significant insight into the development of MCM in Canada and its strengths can be seen in the following reviews and inquiries:

- The Royal Commission on the Donald Marshall Jr. Prosecution (1989)
- The Bernardo Investigation Review (Mr. Justice Archie Campbell - 1996)
- The Commission on Proceedings Involving Guy Paul Morin (1998)
- Mindy Tran, Homicide of, Administrative Review (Insp. R.G. Ambler - 2000)
- The Inquiry Regarding Thomas Sophonow (2001)
- Commission of Inquiry into the Wrongful Conviction of David Milgaard (2005)
- The Missing Women Commission of Inquiry (2012)

Principles of IIO Case Management

There are nine principles of IIO Case Management:

1) The Command Triangle

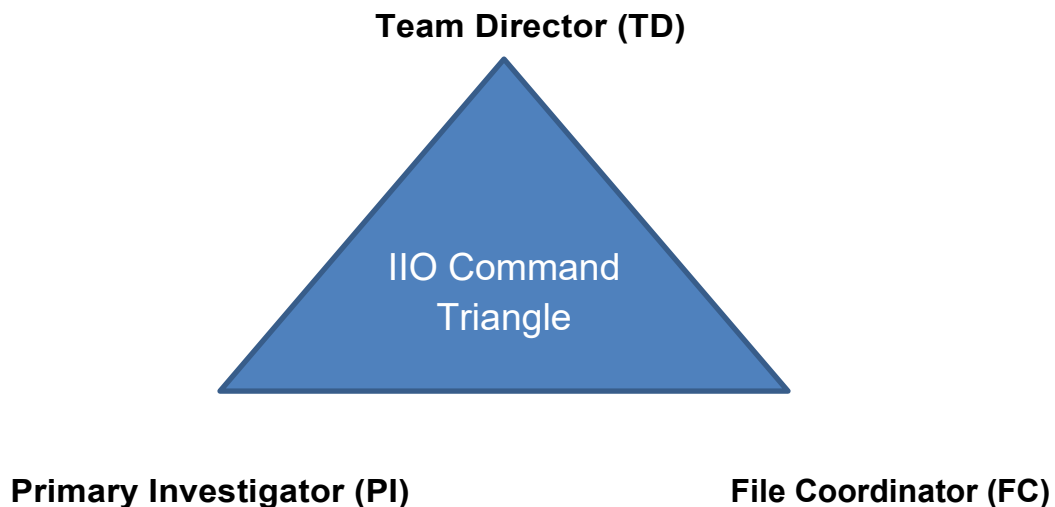
One of the principles of IIO Case Management is the utilization of a Command Triangle. The Command Triangle for an IIO investigation consists of a Team Director (TD), a Primary Investigator (PI), and a File Coordinator (FC).

Each member of the Command Triangle has specific responsibilities. The Team Director

is ultimately responsible for the investigation and decisions made by the Command Triangle.

Some investigations do not require a full Command Triangle. However, the principles are still maintained. In a small or less complex investigation, one person may fulfill more than one role within the Command Triangle (e.g. both the PI and FC).

The Command Triangle is considered the “engine” which advances the investigation. Communication is essential for the Command Triangle to function properly. All three roles of the Command Triangle are involved in the decision making process. The Command Triangle is also responsible for communications with internal Legal Counsel and Crown Counsel.



2) Communication

Good and effective communication within the Command Triangle and the rest of the investigative team is a major factor in contributing to the success of IIO investigations. Communication is the responsibility of all team members and successful teams will establish effective communication from the beginning of an investigation. All members of the Command Triangle (PI, FC and TD) must be involved in all communications around important decisions that will impact the file.

Key considerations to ensuring effective communication are:

- Holding regular and meaningful investigative briefings
- Ensuring everyone on the team has value, and therefore, a say
- Ensuring all discussion is based on facts and/or information gaps
- Making sure that all directions given, verbal or written, are clear and concise

IIO – MANUAL OF INVESTIGATIONS

- Providing effective and appropriate communication with stakeholders, police, Affected Persons and their families, partners, and the public
- Ensuring that all decisions affecting the investigation, whether operational or administrative, are recorded and communicated to the team in a timely manner

Not every idea can or will be prioritized or acted on by the Command Triangle. However, an open and transparent investigation with effective communication practices will produce a sense of alignment, ownership and shared vision by the investigative team. The Command Triangle must maintain an atmosphere that encourages critical reflection and open communication within the investigative team.

3) Leadership and Teams

In an investigative team, leadership and team cohesiveness involves people at all levels of responsibility. Leadership is not limited to the TD. Everyone on the team must function and contribute to benefit the team. It is everyone's responsibility to meet challenges thoughtfully and pragmatically. On occasion, this could mean stretching outside of perceived limitations and taking on new challenges for the benefit of the team.

Leadership means:

- Focusing on what needs to be done
- Identifying the right person for the job
- Embracing and utilizing the knowledge, abilities and skills possessed by others
- Looking for opportunities for staff development
- Being tolerant of diverse personalities and styles
- Embracing change
- Not compromising your standards
- Identifying errors and mitigating risk

4) Management Considerations

Management considerations deal with all aspects of an investigation and are shared by every person within the investigative team. The Command Triangle has oversight and is ultimately responsible for decisions and outcomes. In some instances, the Command Triangle will involve the Chief of Investigations in key decision making. Ultimately, the Chief Civilian Director is the decision making authority for the IIO.

The investigative team identifies issues and provides potential solutions to the day to day functional and investigative challenges the team faces. This does not preclude the Command Triangle from obtaining resources and expertise from outside of the investigative team or agency.

IIO – MANUAL OF INVESTIGATIONS

In an investigative team, considerations may include, however are not limited to, management of:

- The investigative plan (speed, flow, direction)
- Required resources
- Scene examination
- Search/canvass
- Exhibit control
- Media strategy
- Interview planning and execution
- Electronic file management
- Legal and file specific issues
- Disclosure

5) Investigative Strategies

Investigative strategies gather all available evidence to inform the Chief Civilian Director's decision as to whether or not police actions/inactions were lawful, necessary, proportionate and reasonable in the circumstances.

IIO Investigative teams must adopt a multi-dimensional approach and consider all investigative techniques when developing a strategy. This could involve capitalizing on both internal and external resources. To aid in determining the direction to be taken, it is important to employ evidence-led critical thinking.

Strategies to be considered are:

- Establishing priorities
- Taking a consistent approach in evidence collection
- Identifying and addressing evidentiary gaps
- Formulating a time sensitive plan to secure additional evidence
- Ensuring clear communication via effective briefings
- Interacting with all in a professional, unbiased and composed manner
- Applying creativity and flexibility in overcoming challenges
- Being aware of the capability of specialists and how to best utilize them
- Applying relevant law, principles of MCM, Manual of Investigations, SOPs and Business Rules

6) Accountability Mechanisms

Every member of the investigative team is responsible and contributes to the overall accountability of the investigative process.

IIO – MANUAL OF INVESTIGATIONS

The accountability of team members in carrying out their responsibilities comes through collaboration and effective communication with the Command Triangle and other members of the investigative team. Clear and concise briefings, SOPs, clear tasking and Business Rules will contribute to the investigative team's base accountability.

While the Primary Investigator is responsible for the speed, flow and direction of an investigation, other accountability mechanisms within an investigation can also be utilized to ensure that investigations are being managed responsibly and resourced appropriately.

The Command Triangle, in consultation with the Chief of Investigations (COI) and Chief Civilian Director (CCD), will consider utilizing:

- File review processes
- Full file reviews conducted by the COI or delegate (internal audits)
- Reviews by subject matter experts
- Reviews by an outside agency or civilian monitor

Timeliness is a critical factor for accountability of IIO investigations. Bi-weekly reviews will be conducted on all files. The TD is required to ensure the status of every file is updated regularly to ensure a point of time reference of the status of the investigation.

7) Ethical Considerations

Ethical considerations are essential to ensure that investigations are conducted fairly and without bias. From an investigative point of view, IIO Investigators should consider the community shock test when making decisions on how to advance the investigation (commonly referred to as the "Globe and Mail Test").

The investigative team should ask a few basic questions:

- Are we aligned with the IIO's mission, vision and values?
- Are we conducting an unbiased investigation?
- Are we achieving investigative integrity and meeting the expectations of the affected persons/police/stakeholders and the general public?
- What can we do better, more efficiently or more effectively?
- Are our decisions legal, moral and ethical?

It is important that the Command Triangle sets an immediate tone to ensure that all team members are managing biases, applying ethical guidelines and are compliant with the law and policies. The IIO, individually and collectively, must always exhibit the highest standard

of ethical, legal and moral practice of accountability.

8) Legal Considerations

In order for the IIO investigative team to gather admissible evidence, Investigators must understand the law as it applies to the investigation they are undertaking.

Consideration must be given to the legal requirements of any investigative action, technique or strategy. This can involve undertaking training that will enhance the competency level of the investigative team prior to or during the investigation (e.g. case specific facts that trigger the influence of case law).

It is common for the investigative team to have questions when it comes to the legality of a proposed action, technique or strategy. Recommended best practice is for the CT to initially pose legal inquiries to the IIO Legal Counsel. In some situations, inquiries will be undertaken with Crown Counsel directly, in consultation with the CCD.

When seeking legal opinions, it is important to provide full facts in order to obtain an opinion that is relevant and applicable. Partial facts, or lack of the full context, may affect the value of the opinion. Full documentation of all legal advice sought and received is critical to ensure the integrity of our investigations.

The IIO will conduct investigations to the highest standards of law, ensuring all legal rights and processes are upheld. Any deviation from this will impact investigative integrity and become the focal point of criticism.

9) Partnerships

IIO investigations often require specialized participation and the formation of partnerships. When this is the case, a clear understanding of the roles and responsibilities of all participating agencies or individuals is necessary. The Command Triangle and investigative team need to establish strong working relationships with partners early on in the investigation as it will set the tone for the relationship that follows.

It is best practice to establish a single point of contact between the Command Triangle/investigative team and external partners. Common key partners include police liaison officers, forensic specialists, subject matter experts and coroners. In certain circumstances, file specific contracts, such as terms of references and confidentiality agreements, may be required to ensure that all partners have a clear understanding of their roles and responsibilities.

Chapter 3: Roles and Responsibilities

The following chapter sets out the roles and responsibilities of individuals within the IIO Case Management structure.

Chief Civilian Director

The Chief Civilian Director (CCD) is the ultimate authority for IIO investigations and is responsible for making the final decision based on the evidence. This can result in a file being referred to Crown Counsel for consideration of charges or concluded by way of public report. In some instances, no public report is issued depending on public interest considerations.

The IIO is a statutory body and receives legal authority to conduct investigations from Part 7.1 of the *Police Act*. A key component of the legislation is section 38.04, which states:

“38.04 (1) The chief civilian director is responsible for the following:

(a) the management, administration and operation of the independent investigations office;

(b) overseeing investigations conducted by the independent investigations office under this Part.”

This provision captures the essential characteristic of civilian oversight: that investigations of police are under the direction of a civilian who has never been a police officer.

While application of major case management principles to IIO investigations is important as it provides an excellent process for conducting complex investigations, IIO Case Management must account for the role the CCD is required to play. Thus the CCD, usually through the COI, must be regularly briefed on investigations, and will provide direction when appropriate. While the Command Triangle will carry out all day to day aspects of an investigation, provision will be made for briefing and seeking guidance from the CCD and COI, particularly respecting critical issues and matters which may have a significant impact on the investigation. Typically, this is done through regular briefings to and direction from the COI, who will engage the CCD at appropriate times.

Chiefs of Investigations

As described above, the Chiefs of Investigations (COI) have the responsibility for oversight, including investigative integrity, timeliness and accountability for all IIO investigations.

Command Triangle

As set out in Chapter 2, a Command Triangle (CT) consists of a Team Director, Primary Investigator and File Coordinator. All three members have a comprehensive knowledge and understanding of an investigation in its entirety. They work closely together to ensure a complete and thorough investigation is conducted. It is possible that one person may be assigned responsibility for more than one role within the Command Triangle.

Team Director

The Team Director (TD) manages, leads and oversees the investigative team. The TD is responsible for the effective governance of the investigation and will use their skills, attributes and experience to undertake the following roles and responsibilities:

- Selection of the Primary Investigator (PI) and File Coordinator (FC)
- Overall authority, responsibility and accountability for the investigation
- Ensuring the IIO Case Management principles are followed
- Providing leadership and team building
- Utilization of the investigative team
- Communication with the COI, CCD and Media & Communications Liaison (MCL) team
- Liaison with external IIO partners, as required
- Preparation and facilitation of investigative contracts, should they be required
- Control and accountability mechanisms (e.g. ongoing disclosure, reporting, quality of evidence)
- Health, safety and ongoing training for the investigative team
- Timeliness of tasks and investigative priority
- Considering the wider impact of the investigation
- Receive and relay information from the public and the IIO witness line

Primary Investigator

The Primary Investigator (PI) is responsible for the speed, flow and direction of the investigation and will use their skills, attributes and experience to undertake the following

roles and responsibilities:

- Development of investigative strategies and tactics
- Identification, prioritization and delegation of tasks
- Facilitation of focused and concise briefings
- Management of resources
- Communication, promoting active dialogue and active listening
- Compliance with the law (all legal, moral, ethical guidelines)
- Liaison with external IIO partners, as required
- Decision making and documentation of those decisions
- Having a complete and thorough knowledge of the investigation

The PI must be prepared to delegate tasks to the extent necessary to command the overall speed, flow and direction of the investigation. The exception is in less complex investigations where, in fact, the PI will be hands-on in individual tasks and the collection of evidence. Selection of the PI should be based on competence and experience, relative to the incident or as part of a planned development process fully supported by mentorship.

File Coordinator

The File Coordinator (FC) is responsible for managing all the materials and information gathered, located and generated during the investigation. The FC needs to be an experienced Investigator with strong administrative skills and the ability to hold others to account. The FC is a key part of the Command Triangle and must be involved in the decision making process throughout the investigation.

The FC is responsible for the effective governance of the investigation and will use their skills, attributes and experience to oversee the following:

- Information management
- Adherence to the MOI, SOPs, Business Rules
- Development of file specific Business Rules, if needed
- Assigning, tracking and managing tasks
- Assisting the PI in managing workload
- Documentation of briefings
- Disclosure packages (including adherence to the MOU with Crown Counsel)
- Quality assurance and quality control of investigative file material

Affiant

The Affiant is a designated position responsible for obtaining judicial authorizations within a particular investigation. The Affiant works in conjunction with the Command Triangle.

An Affiant is not required on every investigation but, when needed, fills a key role on an investigative team. Admissible evidence relies on properly documented and defensible legal applications. This means that the Affiant must possess a full understanding of the investigation, verify and source every statement included in their application(s) and be prepared to defend their application(s) at judicial proceedings. For these reasons, the Affiant must be kept apprised of all aspects of an investigation.

The Affiant uses their skills, attributes and experience to:

- Provide full, fair and frank representation of the investigation process in applying for judicial authorizations
- Maintain an evidentiary timeline of the investigation for the purpose of preparing judicial authorizations (in consultation with the FC)
- Review all investigative materials on a continual basis
- Takes part in briefings and keeps apprised of aspects of an investigation

The Command Triangle should utilize the knowledge of the Affiant to confirm or refute facts or options when making critical decisions. Because of the detailed judicial preparation, an Affiant can often highlight deficiencies or gaps within the investigation that require addressing.

Investigator

The Investigator is a member of the investigative team who supports the Command Triangle by completing and documenting assigned tasks. Investigators bring a wide range of experience and aptitude to the diverse roles and needs of the investigation.

The Investigator uses their skills, attributes and experience to:

- Conduct thorough and impartial investigations
- Ensure timely completion of tasks
- Manage scenes
- Canvass for evidence
- Identify additional lines of inquiry

IIO – MANUAL OF INVESTIGATIONS

- Search scenes
- Seize exhibits
- Conduct interviews
- Be prepared for briefings (focused, concise and unbiased)
- Give testimony at inquest/court
- Mentor peers

Forensic Investigator

The Forensic Investigator is a member of the investigative team who supports the Command Triangle by coordinating, managing and documenting the scene. In addition to scene management, the Forensic Investigator is usually the liaison with the Pathologist, forensic identification specialists and the police agency's exhibit officer.

The Forensic Investigator will use their skills, attributes and experience to:

- Ensure a thorough and effective scene examination
- Manage physical scene(s)
- Oversee and document continuity of evidence
- Identify the need for specialist resources
- Liaise with other police agencies on exhibits for concurrent investigations

Investigative Assistant

The primary role of the Investigative Assistant (IA) is to support the Command Triangle with managing the file. The IA manages all documentation and provides administrative support to the Investigative Team.

The IA uses their skills, attributes and experience to:

- Create the electronic file
- Assist with creating tasks within the case management system
- Assist with briefing minutes
- Ensure quality assurance and control of task reports
- Load investigative material to the electronic file
- Manage and assist the 5.2 process
- Conduct database queries
- Complete vetting and redaction
- Build the disclosure package in accordance with the MOU
- Receive and relay information from the public and the IIO witness line

Affected Persons Liaison

The Affected Persons Liaison (APL) provides support and services to those affected by incidents being investigated by the IIO.

Effective relationships need to be established and maintained with the Affected Person (AP), the AP families and the community at large. The TD, along with the APL, has responsibility for ensuring that such relationships are developed, followed up and synthesized into the investigative process.

The APL will use their skills, attributes and experience to:

- Serve as a liaison between the Command Triangle, the AP and their families, and communities
- Work with APs and their families to determine their service needs
- Provide APs with resources, information and referrals to outside service providers, as required
- Help APs to articulate and bring forward their concerns
- Facilitate clear and realistic expectations with respect to the IIO mandate, process, and potential outcomes with APs
- Participate in community outreach initiatives and maintain networks within the justice sector

It is important during any investigation to maintain the support of the AP, the AP's family and the community at large. An IIO investigation will generate a great deal of scrutiny from the public, and the effectiveness of the APL's engagement will have significant impact on public confidence. The APL will liaise closely with the Command Triangle to ensure that the release of information, and the timing of it, protects the integrity of the investigation.

Media & Communications Liaison (MCL)

The public's perception about the success or failure of an investigation is often the result of how it is portrayed in the media. The media's quest for information can create challenges for the IIO in balancing investigative integrity and confidentiality with being open and transparent with the media and the public.

The media is a significant conduit to communicating with the public and it is integral that the IIO's work is visible, practically transparent and understood.

The media can also benefit the investigative team when considering public appeals for

IIO – MANUAL OF INVESTIGATIONS

witnesses or when there is a need to correct inaccuracies and inform the public. The TD must ensure that resources are in place to deal with requests for information from media outlets and that relationships with the media, as with all stakeholders, are maintained. The MCL team has an important role in assisting the Command Triangle with media. The Command Triangle has an important role in working with MCL to ensure transparency and public accountability.

The MCL will use their skills, attributes and experience, in consultation with the CCD, to:

- Consult the TD in advance of any media release or before providing information to the media
- Coordinate with the TD for operational or strategic decisions
- Work closely with the APL to ensure that the AP or AP's family is advised of media releases prior to them being released to the general public
- Document all contact with the media and all media releases
- Coordinate activity with the Command Triangle related to media issues

Public meetings or appeals may be appropriate to address concerns about an investigation, appeal for witnesses, develop community intelligence, and provide information regarding police actions. Planning for meetings and appeals should take into consideration the investigative strategy, the potential impact on the AP and AP's family, as well as any other groups of persons affected.

Chapter 4: Notification, Deployment and Initial Investigation

Notification

The threshold for police agencies to notify the IIO is lower than the standard for IIO to undertake an investigation.

Police agencies are required to notify the IIO where there is a reasonable belief that the presence, action, or decision of a police officer may have been a contributing factor in the death or injury of a person.

Police agencies are also required to notify the IIO if a police officer has discharged a firearm where there is a reasonable belief that any person may have been injured.

Upon notification to the IIO, and in the event the jurisdiction threshold is likely met but unconfirmed, Team Directors will determine the resources needed to manage the investigation, including priorities around deployment.

Deployment

Each investigation is case specific, but IIO Investigators should consider the following priorities as they deploy to the scene:

- Deploy based on the operational plan and known facts
- Make contact with a member in charge at the scene
- Ensure scene is secured and expand the perimeter as necessary
- Separate and prioritize all witnesses (police and civilian)
- Assess witnesses' current physical and mental status as an indicator of their ability to provide statements
- Secure evidence, starting with the most perishable

Concurrent Investigations with Police Agencies

The IIO may undertake investigations where police agencies have a concurrent investigation. In those cases, immediate contact will be made between the Team Director and/or Primary Investigator and Team Commander and/or Primary Investigator of the police agency to discuss issues related to:

- Priorities related to scene management
- Witnesses, including potential interviews of witnesses and ensuring that witnesses are not contaminated by providing multiple statements
- General investigative strategies and how the IIO and police agency can each get

IIO – MANUAL OF INVESTIGATIONS

the best evidence for their respective files

As each file is case specific, the IIO will work with the police agency using communication, the guidance of the Memorandum of Understanding and best practices to achieve the best investigative outcome. There may be a need to involve Crown Counsel early in the investigative discussions.

Chapter 5: Investigation Considerations

Maximize Evidentiary Opportunities

The IIO's mandate is to conduct investigations fairly and without bias. In order to do that, Investigators must gather all available and relevant evidence. This can only be accomplished through the identification and implementation of investigative techniques which maximize opportunities to collect, corroborate and secure evidence.

Evidence **MUST** remain the focus of the investigation. Constant review of the evidence, against established and new evidence, is of vital importance.

IIO Investigators strive in all cases to apply best practices in gathering evidence and identifying evidentiary gaps. Every incident offers the Investigator choices or methods to obtain statements and/or secure exhibits. Investigators will gather evidence in a manner that will ensure legal and public scrutiny, applying best investigative practices. They will record decisions made and the rationale for them.

Critical Thinking

The practical application of critical thinking skills and concepts during every stage of an investigation is an effective and proactive way of ensuring investigative integrity. Critical thinking helps mitigate or manage risks and secures the best evidence.

There are some strategies the Command Triangle can use to aid the development of a critical thinking process during an investigation.

These strategies include:

- “Starting from zero”: avoiding early conclusions
- Recognizing and avoiding generalizations and oversimplification
- Listening to and impartially applying ideas and insights into problems
- Embracing and examining all perspectives
- Seeking clarity on issues
- Examining and considering different meanings of words or phrases
- Developing structured criteria for evaluation of information
- Considering and evaluating the credibility of the source of information
- Considering significant and meaningful questions to test ideas or information
- Evaluating and assessing arguments and solutions equally

- Practicing active listening: listening carefully and critically
- Identifying, examining and evaluating assumptions
- Distinguishing relevant from irrelevant facts
- Identifying and recognizing contradictions

Risk Management

Risk is inherent in any complex investigation. IIO investigations will be conducted under the intense scrutiny of the public, the police, APs, the media and/or special interest groups.

To help mitigate risk and maintain the speed, flow and direction of an investigation, the Command Triangle and individual Investigators should consider:

- Having a cohesive and communicative Command Triangle
- Having structured accountability mechanisms within the file
- Engaging legal assistance for legally complex issues
- Recognizing the urgency for specific tasks and advancing the investigation
- Balancing the practical resources available to them
- Keeping the team focused on the objectives of the investigation

Prevention of Tunnel Vision

“Tunnel Vision is insidious. It can affect an investigator or, indeed, anyone involved in the administration of justice with sometimes tragic results. It results in the investigator becoming so focused upon an individual or incident that no other person or incident registers in the officer’s thoughts.”

-Justice Peter Corey, the Inquiry Regarding Thomas Sophonow

“Tunnel vision” occurs when an investigation shifts from an open-minded search for the truth to proving a set theory of a case. Tunnel vision has been the focus of a number of negative comments by the court, and can result in investigations losing objectivity and focus.

The Command Triangle can take steps to prevent tunnel vision, including:

- avoiding early conclusions
- Utilizing an evidence based approach
- Being open to and welcoming periodic review
- Structuring and promoting the use of critical thinking skills
- Promoting the “devil’s advocate” or appointing a contrarian at briefings to question assumptions

- Developing a working relationship with the Crown and IIO Legal Counsel

IIO – MANUAL OF INVESTIGATIONS

- Understanding the nature and quality of the evidence and any gaps
- Structuring and utilizing elimination or inclusion strategies
- Reinforcing open, effective communication skills and strategies
- Practicing active listening and valuing individual contributions

All Investigators must maintain their objectivity in pursuit of evidence. Evidence collected must be tested, corroborated and understood in a true effort to avoid biases or inappropriate application.

The structure provided by investigative oversight, discussion, communication, and clear decision processes will result in investigative integrity. Team or individually-driven hypotheses or theories have value. However, objective fact and evidence must drive the investigation. All information obtained that refutes or supports the hypothesis or theory in the course of the investigation requires it to be explored with the same rigor and debate.

File Reviews

The IIO undertakes regular file reviews as part of its investigative process. A file review involves the Command Triangle and a panel that includes the Chief of Investigations Ops, General or Legal Counsel, and the Chief Civilian Director, or their delegates.

The purpose of the file review process is to:

- Evaluate the evidence
- Assess the quality, complexity and status of the investigation
- Determine if further lines of inquiry are necessary
- Identify good practice, deficiencies or challenges to assist the Command Triangle
- Make timely decision at key points in the investigative process

Key Issues at File Reviews

The Standard Operating Procedures related to file review terms of reference sets out the frequency of the file reviews and the process that is to be followed.

Some key issues to be considered at a file review are:

- The 5 Ws and H – Who? What? When? Where? Why? How?
- What are the initial priorities? Is there any new information or evidence that requires additional priorities to be set?
- What has been achieved?
- What facts are now established?
- What does the investigation know?
- What does the investigation need to know?

IIO – MANUAL OF INVESTIGATIONS

- What resources are necessary to achieve the missing information?
- Where is the evidence known to be or potentially?
- How can the investigation achieve corroboration of the evidence?
- Are the nine guiding principles of MCM being applied?
- Are the briefings open, inclusive and documented?
- Is the speed, flow and direction of the file appropriate?

The review process is a positive and critical opportunity to test the investigative integrity. The file review does not replace regular investigation briefings.

Chapter 6: Investigative Process and Procedure – Note Taking

Importance of Note Taking

An IIO Investigator should keep a separate investigative notebook for every file. Note taking is an important and basic function for all Investigators, and the Investigator's notebook is a fundamental investigative tool.

It is essential that notes are complete, accurate and properly compiled in an IIO issued notebook in order to support investigations, corroborate evidence and increase the credibility of an Investigator's testimony in court. Properly recorded notes will prove to be invaluable in substantiating information years after an investigation.

Note Taking Considerations

Where practical, an Investigator's notes should be:

- Made at the time of the observation or action or as soon as practicable thereafter
- Be clear, factual, accurate and complete
- Contain all significant observations and reasons for decisions made when completing a task
- Be legible
- Completed in black ink and any errors stroked out with a single line and initialed so that the original words are visible for disclosure
- In a file-specific IIO notebook, with non-removable numbered pages

Investigators make a multitude of decisions when completing an individual task. When documenting these decisions in a notebook, Investigators should consider if the decision is more appropriate for the CT and if not, then provide context, rationale and explanation of their action.

All materials, including handwritten notes generated during the course of an investigation, remain the property of the IIO.

Supervisors, including the Command Triangle, should regularly review Investigators' notebooks to ensure adherence to the rules and that the notebooks meet a standard

“Only the police know why they did whatever it was they did. Early, meaningful, and consistent notes, statements, and testimony by an officer as to what that officer's thinking was at a relevant and obviously significant juncture should be the norm. If it is not, then 26 years after the advent of the Charter, the police are failing in their duty.”

- Mr. Justice Stewart, R. v. Campbell

acceptable to the court.

Standard Operating Procedures and/or Business Rules will govern the completion, management and retention of notebooks. Notebooks should be submitted on a regular basis (daily, weekly, monthly, etc.) for copying and scanning to the electronic file according to the requirements of the Command Triangle/Business Rules.

Best Practices for Notebooks

Best practices relating to the use and maintenance of notebooks have been established as follows:

- Reserving one side of the notebook for recording tombstone (personal) information to aid in the vetting process
- Identifying sensitive information and applying vetting codes during the note taking process
- Using task numbers to identify areas of their notes for easy reference

Daily Notebooks (Daily Logs, General Notebooks)

Daily Notebooks are used by Investigators to record their daily activities, work hours and locations. They can also be used to capture information from meetings that are relevant generally to their work. Daily Notebooks do not contain investigative information or materials as that information is captured in the notebook specific to the file. If investigative information or material is captured in the Daily Notebook, it must be disclosed to the relevant file that it corresponds to.

Chapter 7: Investigative Process and Procedure - Briefings

Purpose and Frequency of Briefings

Investigation briefings are the heart and soul of any investigation and are a structured update for the team and a 'check point' for oversight. Regular, well-structured briefings contribute to the success of an investigation. During the initial stages of an investigation, briefings should be conducted as often as practical to be effective in moving the file forward. All briefings should be documented by one designated individual (usually the FC or the IA assisting the FC).

Briefings allow the Command Triangle to set out clear goals and discuss investigational strategies with the wider investigative team. Tasking is normally conducted during briefings and team members must account for their investigative actions, giving clarity to:

- Where we have been
- Where we are
- Where we are going

Preparation for Briefings

Briefings provide the opportunity for the entire team to contribute. Everyone attending a briefing needs to be prepared to report on their investigative actions in a clear and concise manner. Investigators may want to consider utilizing an Event Report to structure their input for the briefing.

Briefings provide an opportunity for discussions of evidence collection strategies, identifying investigative gaps and issues, development of people, as well as contributing to the development of a 'team.' Encouraging team members to debate ideas and strategies will often lead to the most defensible decisions being made for the investigation at the time. Promoting this practice can assist in preventing "tunnel vision," ensuring the integrity of the investigation.

Where practical, the entire investigative team, including Investigative Assistants, should participate in the investigational briefings to ensure maximum collaboration, innovation, efficiency and effectiveness.

Practical Considerations for Briefings

Considerations should be given to:

- Room set up for maximum participation including those attending via teleconference
- Security of the briefing if held outside of IIO premises

IIO – MANUAL OF INVESTIGATIONS

- Commencing on time, being concise, and appropriately managed by the Primary Investigator or delegate
- Identification of a person to document minutes of the briefing. Briefing minutes should be reviewed by all present and adopted, if accurate. Minutes will be placed on file after review and are subject to disclosure
- Documenting the strategic decisions made
- The facilitator (normally the PI) must control the pace of the briefing by keeping the discussions on track and ensuring the goals of the investigation are reinforced
- Video or telephone conferencing should be considered to include input from investigative team members who may be situated in different locations

Separate Briefings

In large scale investigations it may be of value to also have separate briefings for some components of the investigative team. For example, neighborhood canvass team briefings, key witness interview team briefings, and Forensic Team briefings. Information resulting from these briefings must be documented, communicated to the investigative team and included in the file for disclosure.

Debriefings

Debriefings are opportunities to deconstruct the investigation, including its investigative strategies, decisions, deployment, and administrative practices. This exercise will identify lessons learned, which can then be applied to the benefit of the IIO and its future investigations.

Both 'hot' debriefings, undertaken while an investigation is in progress, and debriefings held at the conclusion of an investigation or prosecution are invaluable. Members of the investigative team and representatives from support units that participated in the investigation should be in attendance.

Other Meetings

In addition to investigational briefings and debriefings, all other types of investigational meetings need to be fully documented on the investigative file. Examples of other meetings are: Command Triangle planning, meeting with Crown Counsel or MCL, Joint Management Team/Senior Management, etc. If separate meetings occur, always consider the need for disclosure and the development of a communication summary for inclusion at an investigation briefing, to inform the rest of the team.

Chapter 8: Investigative Process and Procedure – Investigational Logs & Decision Logs

Investigational Logs

Investigational Logs must be used on all files. They differ from Decision Logs as they document events occurring during an investigation including will say statements of significant witnesses, resource impacts, delays, movement of key exhibits, interaction with LOs and APs, to name some. Investigational Logs are a means of maintaining a concise chronological record of an investigation. Investigational Logs are a helpful overall record of the speed, flow and direction of the file, identifying opportunities, chronicling an investigation and providing timelines, etc.

The PI is generally responsible for maintaining the Investigational Log, but at times of absence another member of the CT or delegate may take responsibility for the Investigational Log; this will be clearly stated in the log.

Reasons for maintaining an Investigational Log may include:

- A compilation of information from tasks across the entire file in a single location where investigative events are recorded chronologically to inform as to the investigative trajectory and assist in rationalizing next steps.
- Advising new members of the team as to the status of the investigation
- Updating team members who have been absent
- Updating TD and/or COI and/or CCD as to the status of the investigation
- Using it as a reference for completing reporting requirements
- Documenting progress and transferring information to the Final Investigative Report, if properly maintained

Investigational Logs do not replace the need for Decision Logs.

When using an Investigational Log, the following should be considered:

- What will it contain and what it will not contain? For example: it should not contain sensitive/privileged information such as details of communications with Crown,
- Can that information be extracted easily to be used for reference or adopted for other purposes, such as disclosure?
- Is it an investigation that has the potential to be long term? If so, an Investigational Log will aid in briefing new members as personnel changes (e.g. if another Investigator or investigative team take over the investigation)

Decision Logs

It is imperative Investigators at all levels are able to articulate their reasons for decisions they make. Decision making is the mental (cognitive) process that results in a specific course of action among several alternatives. Decision making is a defining and essential leadership skill (CYA: Can you articulate?).

The duty to articulate key decisions made regarding the speed, flow and direction of an IIO investigation will fall to the members of the Command Triangle. On a daily basis, it is the Primary Investigator who controls the speed, flow and direction. To assist in giving testimony about why and when specific decisions were made during a lengthy investigation, the use of a Decision Log can be extremely beneficial and should be considered on all files and will normally be completed by the Primary Investigator.

Decision Logs do not replace the need for taking investigational notes or the proper documentation of investigational briefings. Decision Logs do, however, provide a place within a file where key decisions can be located and easily reviewed when preparing to give testimony in court. They will also provide a place where a person moving into a leadership role in an ongoing investigation can find a record of what decisions had previously been made. Key decisions should be recorded in a clear, concise manner including all factors and rationale that were considered in the decision-making process. If the decision was made as a result of a consultative process, the Decision Log should reflect who was involved in that process.

The File Coordinator should ensure each file has a single location where Decision Logs are located.

Who Should Maintain a Decision Log?

There will normally only be one Decision Log maintained. This will normally be the responsibility of the Primary Investigator. If there is a need for more than one Decision Log throughout the investigation, that will be identified and agreed upon by the Command Triangle and documented to the file. Any entries made to a Decision Log must clearly indicate who completed them.

Why Maintain a Decision Log?

A properly maintained Decision Log will allow the decision maker(s) and reviewers to easily track and locate all decisions made during the course of an investigation. Decisions made at a specific time may be subject to scrutiny at a much later date, including during an inquest and court proceedings.

What Types of Decisions Should be Included?

The types of decisions that should be documented include, but are not limited to:

- The focus of the investigation
- Use of specific investigative techniques
- Rationale of subject/witness officer designations/re-designations
- Why an avenue of potential investigation was/was not followed
- Obtaining judicial authorizations (e.g. search warrants)
- Key decisions around interview strategies and/or decisions
- Resource availability (personnel, equipment, money)

What Should Be Documented?

Documentation must include:

- The task(s) impacted or created as a result of the decision. The task/event must also cross refer to the Decision Log entry.
- The circumstances surrounding the decision (what was known? when was it known?)
- What decision was made (what did we do about it?)
- When decision was made (date & time)
- Who made the decision, including all the names of those involved in the decision making process
- The rationale for making the decision (why the decision was made)

Considerations for Decision-Making

Some factors to consider when making decisions are:

- Will the decision meet the goals and objectives of the investigation?
- Is it necessary to take action immediately or can it wait?
- What is the risk involved in taking action vs. not taking action?
- Will the decision be acceptable in law, in policy and to the public?
- Is it necessary? If so, why?
- Is it risk effective (reduces risk, supports objectives, etc.)?
- Is it an imperative or action required?
- The urgency of the decision needed (high, medium, etc.)

Phases of Decision Making

1. Information review, identification of issues, short/mid/long
2. 'If' (I do or don't) and 'then' (devil's advocate or contrarian) process and decision process, option prioritization
3. Action imperative: Is it necessary? Effective? Acceptable? (Globe and Mail test). You will be tested. It is prudent to have contemporaneous, clear, accurate documentation to answer:
 - What did you know?
 - When did you know it?
 - What did you do about it?

Investigators should be prepared to respond to vigorous cross-examination on how they reached their decisions.

Chapter 9: Investigative Process and Procedure - Canvassing for Witnesses

Purpose of Canvass

Canvassing is a formal process utilized during the investigation of a major case. A canvass is a method of identifying and securing witnesses or evidence. There are often instances when members of the general public may not always take the initiative to contact the IIO. It is the duty of the IIO to locate, identify and document the observations of these witnesses. The IIO will use resources to support the canvass and conduct follow-up. In some situations, the IIO will also use the resources of external agencies approved by the COI/CCD.

Types of Canvass

There are several types of canvass, including but not limited to:

- Door to door canvassing in an area near a primary or secondary scene
- Video canvassing – private/public video in the area
- Social media canvass
- Structured road checks of vehicles passing by a primary or secondary scene
- Street checks of pedestrians walking in an area near a primary or secondary scene
- Mail distribution

Practical Considerations

Structured canvasses should be initiated at the earliest possible date and time after the incident. The following should be considered when organizing a canvass:

- Sufficient resources should be made available and committed through to completion of the canvass
- Prior to initiating the canvass, a briefing should be held to inform the canvass team of their responsibilities
- A task should be opened for each type of canvass conducted
- A Canvass Coordinator should be designated to manage the canvass and report back on the results
- The area(s) to be canvassed should be established by the PI and should extend far enough to encompass a reasonable expectation of useful information being obtained from witnesses
- The canvass notes must be recorded as per the direction of the Command Triangle

IIO – MANUAL OF INVESTIGATIONS

- Safety, consistency, thoroughness and documentation are important for a professional canvass

Potential follow-up must be identified to the Command Triangle immediately following the canvass. If follow-up is required immediately, because it is critical and perishable, it is incumbent on the Investigator to collect and secure the information immediately (e.g. a key witness). The Canvass Coordinator will document that the canvass was thoroughly completed and will complete a task report summarizing the results of the canvass.

Video Canvassing

Many individual businesses and private residences have video cameras that are recording activity in and adjacent to their location. These video recordings are often time sensitive and perishable. Attempts should be made to identify such recordings in the canvass area as soon as possible and review them for potential information/evidence. Standard Operating Procedures will apply regarding the collection and management of this material and it should be collected by persons with relevant experience.

Social Media/Media Canvassing

Consideration should also be given to canvassing for witnesses via social media or online open source reporting.

Mail Distribution

A standard letter may be sent to local residences soliticing witnessess.

Chapter 10: Investigative Process and Procedure - Interviews

Interviews – General

Interviews are a key part of gathering evidence for every IIO investigation.

The following are some general considerations when conducting interviews:

- Utilizing a "pure version" or "free recall" statement or statements prior to asking the witness questions. In some cases this could include multiple free recalls
- Video or audio recording the interview whenever possible (preferably video)
- Recording all investigative aids
- Documenting all preparation and source materials

Remember that:

- All interviews completed during the course of the investigation are subject to disclosure
- Solicitation of personal information should take place prior to or after recording of the interview (date of birth, driver's license, phone number, etc.)

Staffing of Interviews

Staffing of interviews is the decision of the Command Triangle. They will consider a variety of factors including the experience of Investigators, complexity of the interview, where the interview is to take place, and resources available balanced against a timely and professional investigation.

Best practice is for interviews to take place face to face, however in exigent circumstances the Command Triangle may approve telephone or virtual interviews.

For certain interviews, consideration must be given to utilizing two Investigators. These include but are not limited to:

- An interview of a Subject Officer;
- An interview of a significant Witness Officer;
- A re-designation of an officer;
- Where safety concerns exist;
- When conducting an interview in a privately owned/controlled building; and
- When third parties such as union reps or lawyers are present.

Interviews where an individual Investigator may conduct an interview could be in such circumstances as:

- A peripheral Witness Officer interviewed in a detachment;
- Professional witnesses such as Fire Fighters and Paramedics;
- Civilian witnesses in a safe location such as the IIO office; and
- Triage witnesses during a phone canvass.

On occasions the Command Triangle may decide to conduct a joint interview with the police or other agency with one IIO investigator and representatives from the other investigatory body. On such occasions each agency is responsible for their own recording of the interview and subsequent disclosure of their materials.

Pre-interview Disclosure

All pre-interview disclosure must be carefully considered by the Command Triangle prior to release. Pre-interview disclosure could include evidence such as videos, audio recordings, etc. Decisions around pre-interview disclosure will be documented within the file and are specific to each case.

On a case by case basis, witnesses may be allowed to review materials that they were party to during the incident and/or created. When considering pre-interview disclosure, the Command Triangle must weigh the interests of getting the best evidence possible from a witness with the risk of interfering with a witness' independent recollection of the incident. For police officers, review materials could include their notes, PRIME entries, CAD, radio transmissions, etc.

In the 2020 case *IIO v. Vancouver City Police Department*, the BC Court of Appeal re-affirmed that:

“...the terms of the interview process are to be determined by the Independent Investigations Office and an attempt by an officer to impose conditions on how and when the interview will be conducted is inconsistent with the duty to cooperate fully.”

Witness State of Mind

The state of mind of a witness being interviewed must be considered prior to and during any interview. This includes the affected person (AP), witness officers (WO), subject officers (SO), civilian witnesses (CW) and professional first responder witnesses.

IIO – MANUAL OF INVESTIGATIONS

The physical, mental and emotional state of the individual is an important consideration when conducting any interview. Traumatic events have an impact on all involved, including the AP, CW, professional first responder witness, WO, and SO. Extreme fatigue will also have an impact.

The impact of alcohol and/or drugs on a individual must also be determined, prior to the start of the interview, and as it progresses.

Prior to attempting an interview, IIO Investigators may want to seek information from nurses and/or doctors, as well as from the individual, about what type of drugs an individual may have in their system, and the possible impacts those substances (legal or illicit) could have on his/her ability to participate in an interview. Medical conditions (such as diabetes) should also be identified as they may have an effect on a witness' ability to participate in an interview.

The witness' physical and mental status must be assessed, and reassessed, throughout the interview process. All relevant information about the witness' state must be documented.

Affected Persons

In some IIO cases, there is a concurrent investigation of the AP by a police agency. The police are charged with the authority and responsibility of investigating the AP's criminal activities. Prior to conducting an interview with an AP, Investigators should explain the IIO's role and mandate to the AP. AP's should be made aware that the IIO is not investigating them, but they should also be warned about sharing information with the IIO related to their criminal activities. It is important that the AP understand that they do not have to tell IIO Investigators about their criminal activities, but if they do, the IIO will likely have to provide that information to police. The AP may wish to consult with their lawyer prior to the interview.

To ensure that AP's understand the above, it may be helpful to have the AP explain what the Investigator has told them. Sometimes various factors (such as injuries, mental health and physical status, medication they are taking, limited education or English language skills, or the trauma of the incident) may result in an AP failing to understand their rights and their potential jeopardy, despite being advised of this by the Investigator. If the AP's ability to consent may be impaired in any way, it may be helpful to seek assistance from a medical professional, the AP Liaison, support person, or an interpreter.

Witness Officers

Witness officers are compelled to speak to IIO Investigators pursuant to Part 7.1 of the *Police Act*. The “**GUIDELINES AND EXPECTATIONS WITH RESPECT TO THE CONDUCT OF IIO INVESTIGATIONS**” issued by IIO to the police agencies set out the process for witness officers to fulfill their obligations to attend an IIO interview, including the interviews being video recorded. Any deviation from this process must be agreed and documented by the CT. The IIO designation form outlines the requirements of witness officers. It should be reviewed and signed by the witness officer prior to commencement of an interview.

Planning and rapport building is critical with witness officers. Witness officers can be integral to understanding what happened during an incident that the IIO is investigating, as they may be the only persons who were present when the incident occurred. Follow-up interviews with witness officers may also be necessary. Follow-up interviews could be used for a variety of reasons, including:

- Clarification of information
- Challenging earlier statements or introducing new information to a witness
- Walk-throughs at the scene of the event

Proper planning is required and consultation with the Command Triangle is necessary prior to conducting a follow-up interview. The use of subject matter experts could also be considered.

Subject Officers

Subject officers have the same rights under the Charter as any other person in Canada who faces jeopardy. This includes the right to silence. Subject officers must provide identifying details of witnesses they hold, but do not have to provide a statement, notes, or any compelled information to the IIO related to an incident.

Although they do not have to provide it, it is extremely valuable for the IIO to have the subject officer’s account of an incident. Understanding what unfolded during the incident and the police officer’s assessment of the risk level that they were facing greatly assists the CCD in his/her decision making process.

In order for a subject officer statement to be admissible in court, it must be proven legally voluntary. As a result, IIO Investigators should ensure that subject officers are:

- Aware of their jeopardy (i.e. what the IIO is investigating them for)
- Informed that they do not have to provide a statement, but any statement they give

the IIO is disclosable and could be used against them in court proceedings

- Free to leave at any time

IIO Investigators should ensure that the subject officers providing the statement are doing so voluntarily and not because they are subject to any threats, inducements or promises. In most cases, subject officers will have consulted legal counsel and/or counsel will be present with them in the interview room.

In-Custody Subject Officers

All Investigators should be aware of their responsibilities under the Charter if they are conducting an in-custody interview of a subject officer. The need for IIO Investigators to conduct in-custody interviews could arise when the IIO is investigating incidents that took place while an officer is off-duty.

Providing rights to an in-custody subject officer must conform with specific informational requirements set out by the Supreme Court of Canada. To ensure those are met in each case, the Investigator will utilize a Charter of Rights Card, which matches in content that used routinely by police.

Prior to obtaining a statement from a subject officer who is arrested or detained, that person must know their jeopardy and they must be provided with an opportunity to consult with counsel (sections 10(a) and 10(b) of the Charter). The toll free legal aid number is on the Charter of Rights card.

In addition to advising the subject officer of their Charter Rights, IIO Investigators must establish that the subject officer understood those rights. One simple method to determine this is to have the subject officer explain what they believe their rights are following the Charter and Warning.

If the subject officer chooses to consult with a lawyer, Investigators must be satisfied the person consulted with was a lawyer of their choice and establish that the subject officer understood the advice provided.

Allowing a subject officer to speak with counsel from an arrest scene should only occur if it does not jeopardize the safety of the public, the subject officer, or the Investigator, and it can be done in a manner that affords privacy to the subject officer during the call. The subject officer should be given access to counsel as soon as is reasonably practical.

Investigators must also be mindful whenever there is a change of jeopardy during an

interview. A change of jeopardy occurs when circumstances arise that cause the reason for the interview to be different than that for which the subject was originally advised (e.g. the subject officer is being interviewed for an assault and it is learned that the victim has died). Also, if at any time during the interview of a subject officer information comes to light that he/she is talking about offences other than the one for which he/she was originally advised, cautions and Charter warnings may need to be considered.

Youth and Vulnerable Witnesses

Careful consideration must be given to interviewing youth and vulnerable witnesses. It is important that youth and vulnerable witnesses feel engaged and comfortable during an IIO interview in order to get the best possible evidence from them.

IIO Investigators may ask the Affected Persons Liaison for advice and assistance prior to conducting an interview with youth or vulnerable witnesses. Sometimes youth and vulnerable witnesses will also need family members or support persons' assistance in order to feel comfortable prior to their interview. IIO Investigators must also consider whether the youth or vulnerable person would benefit from having a family member, support person or APL present for an interview.

Sworn Statements (KGB)

Sworn Statements are a rarity for the IIO. A sworn witness statement, commonly referred to as a "KGB statement," may be admissible when the witness recants an earlier statement or provides conflicting evidence. It could also be used in rare situations when a witness is out of town or of no fixed address and is unlikely to be located again to provide evidence if the matter goes to court.

For a sworn witness statement to be admissible, the statement must be voluntary and the witness must be sworn or administered a solemn affirmation or solemn declaration before the taking of the statement. The witness must also be warned that the statement may be used as evidence and if the witness recants at a subsequent judicial proceeding that there are serious criminal sanctions that may accompany the making of a false statement. These statements must be audio and video recorded in their entirety. These types of statements should not be taken as a matter of course and a proper analysis of the situation should be made prior to utilizing this technique. Investigators should use the Sworn Statement Form if taking a sworn statement.

Follow Up & Second Interviews

IIO Investigators may be required to interview a witness who has already been interviewed by the IIO or another agency. The situations where this could occur include:

IIO – MANUAL OF INVESTIGATIONS

- A police agency has conducted a jeopardy statement prior to the IIO taking a statement;
- Evidence collected by the IIO requires clarification or expansion by a witness;
- A witness brings forward new evidence; and
- There is error or omission in an initial interview by an Investigator.

In these cases, careful consideration and planning must be made by the interviewers to ensure it does not create issues with consistency and accuracy. It is best practice not to repeat a free recall or pure version statement, although there will be occasions where it is appropriate to do so.

At the discretion of the IIO Investigator, a witness in a second interview may be provided an opportunity to review his or her initial statement before any follow up questions are asked.

Chapter 11: Disclosure

Disclosure Obligations

IIO disclosure obligations are governed by the IIO Memorandum of Understanding with Crown Counsel, which is premised on case law. Case law relating to disclosure is voluminous. The landmark case that is relied upon is *R. v. Stinchcombe* [1991] 3 S.C.R. 326. This decision upholds the duty of the Crown to “...disclose to the defence all material evidence whether favourable to the accused or not.”

“The trial of the accused is merely a side show. The trial of the investigation is the main event.”

-Mr. Justice David Watt, Ontario Court of Justice

While Crown is not obliged to disclose material that is “clearly irrelevant”, the courts have held that one measure of relevance is its usefulness to the defence. In *R. v. Dixon* [1998] 1 S.C.R. 244, the court stated that: “*the right of disclosure of all relevant material has a broad scope and includes material that may have only marginal value to the issues at trial.*”

The IIO is obliged to disclose all potentially relevant information to Crown. The court defined “potentially relevant” information to include:

“not only information related to those matters the Crown intends to adduce in evidence against the accused, but also any information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence.” (R. v. McNeil, 2009 SCC 3)

Responsibility for Disclosure

The responsibility for disclosure for IIO files generally rests with the FC, who is assisted in their duties by the Investigative Assistants. Large and/or complex investigations may warrant the implementation of a disclosure team who report to the FC. Notwithstanding the responsibility of the FC, or a disclosure team, every Investigator is responsible for meeting all identified disclosure requirements, timelines, and content to support the FC and the disclosure process.

The IIO has Standard Operating Procedures related to disclosure that all Investigators must follow. A well-organized file, properly tracked and disclosed in adherence with applicable law, should help to keep issues of disclosure out of the spotlight.

Preparation for Disclosure

In major investigations, resources should be in place from the onset to prepare the file material for disclosure. Disclosure starts at the beginning of every IIO file by ensuring relevant materials are placed into

their respective tasks within the file immediately. In short, if the IIO knows it, Crown must know it, or know of its existence.

Crown is ultimately responsible for disclosure and should be consulted early in the process of preparing the file materials. The IIO should ensure that Crown is aware of the method and structure of disclosure material that will be provided. At all times, the Crown's discretion in providing disclosure will be reviewable by the trial judge.

Disclosure will, with few exceptions, be completed electronically in accordance with the MOU with Crown Counsel which lays out the requirements for organization, indexing and searchability. Timely and accurate disclosure has become even more vital since the decision in *R. v. Jordan* [2016] 1 SCR 631, which sets out strict time periods within which an accused must be tried.

Disclosure to Other Agencies

The IIO conducts investigations that are of great interest to the public. As a result, IIO files may be disclosed to a number of other agencies, including for use in:

- Coroner's Inquests
- Criminal prosecutions of the AP on a concurrent file
- Civil proceedings
- Office of the Police Complaints Commissioner for their investigation
- Civilian Review and Complaints Commission
- Police for information, training and disciplinary procedures

As the IIO undertakes its investigation and builds its disclosure all Investigators must be aware that the IIO file may be disclosed to many agencies, regardless of whether the IIO investigation results in a referral to Crown. Every file will contain a disclosure folder that captures what information has been disclosed and to whom.

The Command Triangle for each file will be contacted when a file they are responsible for is being disclosed to an outside agency.

Vetting

Vetting is the process of earmarking information of a sensitive nature that may not be disclosable. The IIO is responsible for identifying to Crown information that should be protected from disclosure, through its vetting process. This will include: personal information, privileged information, delayed disclosure, and irrelevant information. Crown, not the IIO, has the ultimate responsibility for deciding what may not be disclosed. Any

IIO – MANUAL OF INVESTIGATIONS

potential disclosure of information which is sensitive should be discussed and monitored by IIO Legal Counsel.

The “General Police Vetting Guidelines For Crown Disclosure” prepared by the BC Prosecution Service should be used as a benchmark for disclosure and protection of personal information.

The following are the National Vetting Codes recognized by Crown and used by the IIO:

- V1- Personal Witness Information (e.g. birthdates, addresses, etc.)
- V2- Privileged Information (e.g. solicitor-client)
- V3- Delayed Disclosure (e.g. holdback)
- V4- Irrelevant Information (e.g. information related to other files)
- V5- Other Information (for use on specific files with prior agreement of Crown)
- V6- Section 38 Canada Evidence Act (National Security)
- V7- Section 39 Canada Evidence Act (Cabinet Confidences)

Holdback Information

Any information identified as holdback should be vetted immediately, locked down electronically and kept separate from other information on the file. Any Investigators aware of the holdback information will sign the “Holdback Information Acknowledgement Form” to confirm that they have been advised not to divulge the information to anyone without prior approval. This includes information provided by police agencies that is considered holdback information.

Investigation Notes, Emails and Disclosure Statements

Processes must be in place for the collection, vetting and disclosure of IIO notes and emails, as well as any police notes collected during the IIO investigation.

Every Investigator, including senior management, must ensure their notes and relevant investigative information in their possession is captured to the file. If the Command Triangle is aware of the existence of relevant notes or information, they must take every step to ensure that information forms part of the disclosure package. Standard Operating Procedures are in place to govern the use and disclosure of emails on IIO files.

Notebooks should be vetted by each Investigator as the file proceeds.

On large files, with numerous Investigators, it may be practical to have Investigators sign ‘Disclosure Statements.’ Such statements would indicate that all materials generated by

them during the investigation, or materials that have come into their possession pertaining to the investigation have been forwarded for inclusion on the master file. Such statements should not be too onerous or legally formalistic, nor should they resemble a statutory declaration. They should merely impress upon team members to exercise due diligence with respect to disclosing materials in their possession that are a product of the investigation.

Disclosure of Police and IIO Disciplinary Records

There is an obligation for the Crown to disclose the disciplinary records of IIO Investigators and involved police officers where those records are based on serious police misconduct and where those records could reasonably impact the case against the accused (*R. v. McNeil*).

The McNeil decision makes disclosure of these disciplinary records a first-party disclosure obligation. Disclosure will include:

- Any conviction or finding of guilt under the Criminal Code or the Controlled Drugs and Substances Act for which a pardon has not been granted
- Any outstanding charges under the Canadian Criminal Code or the Controlled Drugs and Substances Act
- Any conviction or finding of guilt under any other federal or provincial statute
- Any misconduct or charge of misconduct

It is not the practice of the IIO to include McNeil disclosure forms in the first instance and Crown should be advised that they are not included in our initial disclosure package. When Crown requests McNeil disclosure for the purposes of a charge assessment, the Chief Operations Officer will fill out the forms, seal them into an envelope and return them to Crown. Crown will seek McNeil disclosure from witness officers involved in the file.

APPENDIX 1: NINE PRINCIPLES of IIO CASE MANAGEMENT

9 PRINCIPLES OF IIO CASE MANAGEMENT

1. **COMMAND TRIANGLE**
 - Team Director / Primary Investigator / File Coordinator

2. **MANAGEMENT CONSIDERATIONS**
 - Project Management
 - Scene Management
 - Disclosure
 - Exhibit Management
 - Resource Management
 - Media/Issues Management
 - Investigative Plan Management
 - File Management
 - Canvass Management
 - Interview Planning

3. **INVESTIGATIVE STRATEGIES**
 - Critical thinking
 - Creative problem solving
 - Empirical reasoning - following evidence
 - Avoidance of tunnel vision
 - Quality control and periodic external verification
 - Utilization of specialists
 - Gap analysis

4. **LEADERSHIP AND TEAMS**
 - Leadership / ownership
 - Team building / selection / development
 - Diversity
 - Embracing change

5. **LEGAL CONSIDERATIONS**
 - Charter Compliance
 - Crown Counsel/Legal Counsel involvement
 - Highest standards of law

6. **ETHICAL CONSIDERATIONS**
 - Ethics
 - The public interest
 - IIO Mission, Vision & Values
 - Community Shock Test

9 PRINCIPLES OF IIO CASE MANAGEMENT

7. **ACCOUNTABILITY MECHANISMS**

- File Review Processes
- Public Reporting
- Subject matter experts
- Outside agency or civilian monitor

8. **COMMUNICATION**

- Effective
- Open
- Consistent
- Practical transparency

9. **PARTNERSHIPS**

- Clear understanding of roles
- Strong relationships
- MOUs

APPENDIX 2: RECOMMENDED READING

Police Oversight (Chapters 1-2)

- Wood v. Schaeffer 3 SCR 1053
- R. v. Nasogaluak 2010 SCC 6
- R. v. Pompeo 2014 BCCA 317
- Independent Investigations Office of British Columbia v. Vancouver (City) Police Department 2018 BCSC 1804
- Independent Investigations Office of British Columbia v. Vancouver (City) Police Department 2020 BCCA 4
- Report of the s.42 Review of the Independent Investigations Office
- Review of the Investigation into the Police-Involved Shooting at the Starlight Casino
- British Columbia, Braidwood Hearing and Study Commission on the Death of Robert Dziekanski, Thomas C. Braidwood, May 2010
- British Columbia, Alone and Cold: The Inquiry into the death of Frank Paul, The Davies Commission, February 12, 2009
- Ontario, Report of the Independent Police Oversight Review, the Honourable Michael H. Tulloch, 2017

Note Taking (Chapter 6)

- R. v. Bailey [2005] ABPC 61
- R. v. Campbell [2008] BCSC
- R. v. Berner, 2010 BCPC 94
- R. v. Daley, 2015 ONSC 7367
- R. v. Thompson, 2015 ONCA 800

Interviews (Chapter 10)

- R. v. Oickle 2000 SCC 38
- R. v. Singh 2007 SCC 48
- R. v. Grant 2009 SCC 32
- R. v. Sinclair 2010 SCC 35

Disclosure (Chapter 11)

- R. v. Stinchcombe [1991] 3 SCR
- R. v. McNeil 2009 SCC 3
- R. v. Jordan 2016 SCC 27
- R. v. Gubbins 2018 SCC 44